

**REMARKS**

Claims 12-37 were pending in this application. Claims 1-11 were previously canceled. Claim 38 has been newly added. Hence, claims 12-38 are now pending in this application.

Claim 38 was added in order to more fully claim the invention. Support for the new claim may be found throughout the application in general and at least on page 8 of the specification.

No new matter has been added.

**Rejection of the Claims**

Claims 12, 15-19, and 29-37 were rejected under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,681,211 (Gatto).

Claims 13-14 and 20-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gatto in view of US Patent No. 6,275,814 (Giansante et al.).

These rejections are respectfully traversed.

**Arguments in Support of the Claims**

Applicant thanks the Examiner for the thorough analysis of the application and the detailed comments provided in the Office Action. Nevertheless, Applicant respectfully submits that there is a fundamental flaw in the Examiner's understanding of the claimed invention and the prior art references.

The present invention, as recited in the independent claims, is directed to a framework for comparing brokers according to the prices they charge (i.e., commission). Gatto, on the other hand, relates to a system for measuring the performance of securities analysts (i.e., how precisely the analysts are able to predict a company's financial performance). **Gatto does not compare the prices charged by the analysts for their services.** Therefore, Applicant

respectfully submits that the Gatto type of “performance” comparison is entirely different from the comparison of commissions or prices charged, as explained further below.

In Gatto, “performance” refers to the objectively measurable predictive prowess of a securities analyst in predicting the earnings of a public company in the future. Gatto does not disclose, teach, or suggest any system for analyzing the pricing behavior of brokers or investment advisors. These brokers or investment advisors are commissioned salespeople who deal in securities on behalf of their customers. Such brokers have discretionary power to set their “commission” (referred to in the application as “price”) for their service to their customers. However, such brokers do not control, influence, or predict the price of securities or the earnings of a corporation. Thus, unlike the “performance” referred to in Gatto, the “performance” in the present invention relates to how well an individual broker uses his discretion to set his discretionary commissions.

As an example, some brokers will charge too much commission for their services and, as a result, will have fewer customers, while other brokers will charge too little. And although the latter brokers may have more customers, they may not be earning as much commissions as other brokers who are charging a higher commission. Applicant’s study of this commission-setting, or price-setting, behavior among commissioned salespeople suggests that there is in fact a wide variation among brokers. Further, there is currently no way to compare the commissions-setting activity among brokers at different levels of experience and representing different types of clients in different types of transactions. Applicant therefore respectfully submits that the Examiner has a fundamental misunderstanding of the present invention and of Gatto.

For illustration purposes only and not to be considered a limitation, Applicant has attached herewith (in the Appendix) a further explanation and additional examples of the differences in commissions, or prices, that brokers may charge. These illustrations are provided for the Examiner’s edification only and are not intended to be an amendment of the application or otherwise incorporated into the application.

Giansante et al. fails to remedy the defects in Gatto. Giansante et al. appears to be directed merely to a way of evaluating investment assets by treating certain asset characteristics

as probabilistic random variables and averaging the resultant portfolios at each risk level. Nowhere does Giansante et al. disclose or suggest the pricing performance comparison recited in the claimed invention. Therefore even assume there is motivation to combine Gatto and Giansante et al., the resulting combination would not produce the claimed invention.

Accordingly, because neither Gatto nor Giansante et al., nor any other art of record, taken alone or in combination, disclose or suggest the invention as recited in independent claims 12, 20, and 29, withdrawal of the rejection against these claims is respectfully requested.

As for dependent claims 13-19, 21-28, and 30-38, although they may recite independently allowable subject matter, these claims depend from independent claims 12, 20, and 29, respectively, and are therefore allowable for at least the same reasons as claims 12, 20, and 29.

### **CONCLUSION**

In view of the above, Applicant believes the pending claims are in condition for allowance and the Examiner is respectfully requested to pass this application to issuance.

Dated:

Respectfully submitted,

By   
Daniel G. Nguyen

Registration No.: 42,933  
JENKENS & GILCHRIST, A PROFESSIONAL  
CORPORATION  
5 Houston Center  
1401 McKinney, Suite 2600  
Houston, Texas 77010  
(713) 951-3354  
Attorneys For Applicant

**APPENDIX**

# Pricing

---

- Pricing refers to the discretionary commissions that investment advisors charge their clients for any given trade.
- While advisors are given direction around what their commissions should be for a trade (based on their brokerage firm's Commission Schedule), they ultimately decide the amount to charge the client
- Different brokers, even at the same firm, charge different commissions for the exact same trade
- PriceMetrix pricing analyses and solutions target this disparate behavior (example below)

# Pricing

A

Joe Smith decides to buy 500 shares of Microsoft at \$27.15 per share

B

Joe places the same order with each of the five (5) different advisors he holds accounts with at Acme Brokerage

C

Acme Brokerage's Scheduled Commission (the suggested price) for this trade is \$291

D

Each of Joe's five advisors decide what commission they will charge him to execute his trade. They each charge Joe a different amount, despite executing the same trade at the same price

Commission Charged to Buy 500 Shares of Microsoft at \$27.15 per Share

